

GROOM LAW GROUP

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Via ECF

Hon. Gregory H. Woods
United States District Court for the Southern District of New York
Daniel Patrick Moynihan Courthouse
500 Pearl St.
New York, NY 10007-1312

Re: *Christopher Hudson v. National Football League Management Council, et al.*,
No. 1:18-cv-4483-GHW-RWL (S.D.N.Y.)

Judge Woods:

Groom Law Group and Rivkin Radler LLP represent the “Board Defendants,” which include the Retirement Board of the Bert Bell/Pete Rozelle NFL Player Retirement Plan (“Plan”), Katherine Blackburn, Richard Cass, Ted Phillips, Samuel McCullum, Robert Smith, and Jeffrey Van Note. Pursuant to Rule 2.C of this Court’s Individual Practices, we submit this letter on behalf of the Board Defendants to request a conference prior to filing a renewed motion to dismiss Plaintiff’s amended complaint (“AC,” ECF 104).

Introduction

In May 2018, Plaintiff Christopher Hudson brought this putative ERISA class action against the Board Defendants, the NFL Management Council, and the NFL Players Association claiming the summary plan description (“SPD”) for the Plan did not adequately disclose the Retirement Board’s interpretation of the Plan’s reclassification provision.

On September 30, 2019, the Court adopted Magistrate Judge Lehrburger’s Report and Recommendation (“R&R,” ECF 90) and dismissed Hudson’s complaint in its entirety. *Hudson v. Nat’l Football League Mgmt. Council*, No. 1:18-cv-4483, 2019 WL 4784680 (S.D.N.Y. Sept. 30, 2019). The Court gave Hudson the opportunity to replead his breach-of-fiduciary-duty claim against the Board Defendants, but only “to the extent that [he could] plead additional facts which would support a § 404 claim for failure to disclose.” *Id.* at *3. The Court clarified that Hudson might have a claim if he could allege the Board Defendants failed to provide information knowing that their failure to do so might cause Hudson harm. *Id.* at *3 (citing *Devlin v. Empire Blue Cross & Blue Shield*, 274 F.3d 76, 88 (2d Cir. 2001)).

On November 19, 2019, Hudson filed an amended complaint. Count I contains Hudson’s latest breach-of-fiduciary-duty claim against the Board Defendants. It alleges (i) “[t]he Board

GROOM LAW GROUP

Hon. Gregory H. Woods
 November 26, 2019
 Page 2

Defendants had an affirmative duty to disclose that the term ‘changed circumstances’ had been interpreted in a specific manner by the Board in advance of the time that [Hudson] and the Class filed their initial claim for benefits... under the Plan,” (ii) “[n]one of the materials provided by [the] Board” did so, and (iii) “[a]s a result of this violation, [Hudson] and the other members of the Class were not properly informed that subsequently seeking reclassification and/or modification of their category of benefits would require a higher standard and that seeking any [sic] early application would unnecessarily lock themselves into a lower category of benefits.” AC at 25-27, ¶¶ 65, 66, 71.¹

Count I is deficient because the Court has already rejected its premise, namely the allegation that Hudson was “locked in” to his original benefit award because he was not informed that a higher standard applied to reclassification requests. *Hudson*, 2019 WL 4784680, at *2 (holding that the SPD “reasonably apprised plan participants that a failure to put forth comprehensive evidence in their initial applications for benefits could permanently lock them into a lower benefits classification”). In addition, the amended complaint does not allege that Hudson knew of or asked about the “changed circumstances” provision before he applied for benefits; it does not allege that the Board Defendants ignored or failed to respond to any inquiry from Hudson; and, most importantly, it does not allege that the Board Defendants knew or should have known that Hudson would be harmed by any alleged failure to disclose. In fact, the amended complaint does not allege what Hudson would have done differently had the Board Defendants made the disclosures Hudson claims were required, demonstrating—as the Board Defendants have argued all along—that Hudson was not harmed in any way by the breach of fiduciary duty alleged in this case.²

In the background allegations leading up to Count I, the amended complaint alleges Hudson spoke with certain individuals on “multiple occasions,” AC at 12-13, ¶ 41, but those conversations took place long after Hudson’s original application and award. Therefore, the allegations do not support Hudson’s claim that the Board Defendants had or breached a duty to disclose information to him *prior to* his award of benefits. The added allegations about a “confidential witness,” unfavorable news reports, other Player inquiries, and prior lawsuits against the Plan do not make Count I viable either. These general allegations do not show the Board Defendants knew or should have known that Hudson or any other Player could be harmed if he did not have additional information about the “changed circumstances” provision *before* he applied for benefits, as Hudson alleges.³

¹ Cites to the amended complaint include both the page number and the paragraph because the amended complaint contains duplicative and/or misnumbered paragraphs.

² See R&R at 48, n.19 (“The absence of these sorts of concrete allegations—combined with the procedural history of Hudson’s many attempts for reclassification—suggests a *post hoc* justification for this claim.”).

³ Hudson alleges that three prior lawsuits should have alerted the Board Defendants and the bargaining parties that they had breached their fiduciary duties. AC at 16, ¶ 50. The *Bryant* and *Boyd* cases concerned the Board’s application of the reclassification provision (both courts upheld the same interpretation the Board applied to

GROOM LAW GROUP

Hon. Gregory H. Woods
November 26, 2019
Page 3

Finally, even if the amended complaint stated a viable breach-of-fiduciary-duty claim, it is untimely. Hudson alleges the Board breached its fiduciary duties by not disclosing its interpretation of the reclassification provision “in advance of the time” he filed his initial claim for benefits and that he became “locked in” to a lower category as a result of his original benefit award. Hudson applied for benefits on March 9, 2010. AC at 10, ¶ 31. He received an award of benefits on May 20, 2011. AC at 10, ¶ 33. This lawsuit, filed more than six years later, is untimely using either date as a starting point. *See* 29 U.S.C. § 1113 (barring claims for breach of fiduciary duty that took place more than six years prior to initiation of the action).

Conclusion

Defendants respectfully request the Court schedule a pre-motion conference to discuss Defendants’ anticipated motion.

Sincerely,



Michael L. Junk

cc: All Counsel of Record (via ECF)

Hudson’s request for reclassification), not the Board’s purported failure to disclose additional information about it. The *Solomon* case had nothing whatsoever to do with the Plan’s reclassification provision.